

Rel: April 21, 2023

Notice: This opinion is subject to formal revision before publication in the advance sheets of **Southern Reporter**. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is printed in **Southern Reporter**.

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2022-2023

1210300

Ex parte Walmart Inc. et al.

PETITION FOR WRIT OF MANDAMUS

**(In re: Mobile County Board of Health and Family Oriented
Primary Health Care Clinic, Inc.)**

v.

Mitchell "Chip" Fisher et al.)

(Mobile Circuit Court: CV-19-902806)

1210313

Mobile County

v.

**Mobile County Board of Health and Family Oriented Primary
Health Care Clinic, Inc.**

**Appeal from Mobile Circuit Court
(CV-19-902806)**

PER CURIAM.

1210300 -- PETITION DENIED. NO OPINION.

Parker, C.J., and Shaw, Wise, Bryan, Mendheim, Stewart, and
Mitchell, JJ., concur.

Sellers, J., dissents, with opinion.

Cook, J., recuses himself.

1210313 -- AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.

Parker, C.J., and Shaw, Wise, Bryan, Mendheim, Stewart, and
Mitchell, JJ., concur.

Sellers, J., dissents, with opinion.

Cook, J., recuses himself.

1210300 and 1210313

SELLERS, Justice (dissenting).

The Mobile County Board of Health ("the Board") and Family Oriented Primary Health Care Clinic, Inc. ("the Clinic"), commenced an action in the Mobile Circuit Court against various opioid manufacturers, opioid distributors, and pharmacies. The Board and the Clinic sought relief because, they alleged, they had been impacted by an opioid crisis allegedly created by the defendants. In case number 1210300, Walmart Inc. and other defendants seek a writ of mandamus directing the trial court to grant their motion for a judgment on the pleadings because, they assert, Alabama's abatement statute, § 6-5-440, Ala. Code 1975, requires dismissal of the action. Consistent with my dissent in Ex parte Cardinal Health, Inc., [Ms. 1210337, Mar. 17, 2023] ___ So. 3d ___, ___ (Ala. 2023) (Sellers, J., dissenting), I respectfully dissent from the Court's decision today to deny the petition for a writ of mandamus. I also dissent from the Court's decision in case number 1210313, an appeal that has been consolidated with the referenced petition for a writ of mandamus, to affirm the trial court's judgment denying Mobile County's motion to intervene in the action. Based on my conclusion regarding the petition for a writ of mandamus and the applicability of the abatement statute, I

1210300 and 1210313

would dismiss Mobile County's appeal as moot.